In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1118

LARRY ROBERT EDDINGTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 328 F.2d 760.

JURISDICTION

The judgment of the court of appeals was entered on February 18, 1964. A petition for rehearing was denied on March 23, 1964. On April 22, 1964 Mr. Justice Clark extended the time for filing a petition

for a writ of certiorari to and including May 15, 1964 and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence of petitioner's purpose in transporting a girl in interstate commerce to a house of prostitution was sufficient to sustain a conviction under the Mann Act.

STATEMENT

After a trial by jury in the United States District Court for the Southern District of Illinois, petitioner was convicted of transporting one Martha Barber from Koontz Lake, Indiana, to Quincy, Illinois, for the purposes of prostitution in violation of 18 U.S.C. 2421.[1] He was sentenced to imprisonment for five years. The court of appeals affirmed.

The government's evidence, insofar as pertinent here, may be summarized as follows:

Martha Barber, an 18-year-old girl who came to the United States from Ireland in 1960, met petitioner in South Bend, Indiana, in March 1961 and

[1] Petitioner was also convicted, under a separate indictment which had been consolidated for trial with the substantive charge, of conspiracy to harbor an alien woman for the purpose of prostitution without filing the statement required by 18 U.S.C. 2424. This conviction (for which he was sentenced to a two-year term of imprisonment to run consecutively with the sentence imposed for the substantive offense) is not challenged.

began dating him frequently (Pet. 5; G. App. 4-5, 15; Tr. 64).[2] In May 1961, petitioner went to Bloomington, Illinois, to operate a restaurant and asked Miss Barber to join him there (G. App. 5). She gave up a job as a secretary in South Bend and followed petitioner (G. App. 16). A day or two after her arrival in Bloomington, petitioner advised her that he had to leave Bloomington because police were looking for him in connection with a shooting (G. App. 17). He said that he did not want her to return to South Bend and that he would find a place for her to stay while he was at South Bend (G. App. 16-17). Petitioner then gave the girl the telephone number of a woman in Quincy, Illinois, whom she was to call and inquire if she could stay there for a week (G. App. 17, 33).[3] Petitioner, a friend, and Miss Barber then traveled by automobile to motel in Quincy, where petitioner told her that she was going to be a prostitute and would have to stay in the house of prostitution for one week (Tr. 40; G. App. 17, 18). On the following morning Miss Barber traveled by taxicab to the house of prostitution (G. App. 18; Tr. 72). She then began to engage in prostitution (G. App. 19).

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[2] "G. App." refers to the Government's Appendix in the court of appeals. "Tr." refers to the transcript of trial proceedings which, together with a transcript of the court's instructions, are being lodged with the Clerk.

[3] Miss Barber testified on direct examination that petitioner discussed prostitution with her in Bloomington and told her that she would have to stay at the house of prostitution in Quincy for only one week (Tr. 42). On cross-examination, however, she testified that she did not know the nature of the establishment in Quincy until the party had arrived in that city (Tr. 70-71).

During the first week at the house in Quincy, Miss Barber was told that she would not be permitted to leave unless her "boyfriend" came to take her away (G. App. 18, 31-32). After three weeks, she called petitioner and told him that she would leave if he did not come and get her. Petitioner came the following morning with his friend and picked her up (G. App. 8). Miss Barber testified that it was her intention to leave the house permanently, although she did not recall exactly what arrangements she had made upon leaving (G. App. 20, 32).

Petitioner drove Miss Barber to Koontz Lake, Indiana, where they rented a cottage (G. App. 8-9). During a week spent there in the company of petitioner's friends, petitioner urged Miss Barber to resume her activities as a prostitute. When Miss Barber resisted this suggestion, petitioner abused her physically, once even throwing her into the lake (G. App. 9-10, 32). Out of fear of petitioner (G. App. 32), Miss Barber permitted him to drive her back to Quincy where she resumed her activities as a prostitute (G. App. 10).

ARGUMENT

Relying on *Mortensen* v. *United States*, 322 U.S. 369, 375, petitioner argues that his transportation of Miss Barber from Koontz Lake to Quincy was merely the return leg of a vacation trip, for which he could not be convicted under the Mann Act. The testimony of Miss Barber, which the jury apparently believed, demonstrated, however, that she left Quincy

with no intention of returning to a life of prostitution, and that petitioner used the week at Koontz Lake to persuade her by various means, including physical abuse, to return to the house of prostitution in Quincy. Hence, there was sufficient evidence for the jury to conclude that the trip from Quincy to Koontz Lake and then back to Quincy was not, as in *Mortensen*, "innocent recreation and a holiday" in the form of an "innocent round trip." 322 U.S. at 375. In this case, unlike *Mortensen*, there was a definite "change in the purpose of the trip during its course." *Ibid.* The jury could reasonably have concluded that the trip to Koontz Lake was Miss Barber's escape from a life of prostitution and her return was as a captive being forced, against her will, to resume the immoral practices which the statute intended to prevent.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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